

Internal Revenue Service

Department of the Treasury
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Washington, DC 20224

Date 11/21/94

Surname [REDACTED]

Person to Contact: [REDACTED] 11/23/94

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

OCT 11 1994

Employer Identification Number: [REDACTED]
Key District: Baltimore

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the laws of the State of [REDACTED] on [REDACTED] for charitable purposes. Specifically, your purposes are to provide greater access to the general public of mental health services by trained licensed clinical social workers and/or psychologist at an affordable cost. You state that you have been incorporated for the sole purpose of providing affordable counseling services for the community in general and the Christian community in particular.

You are not a membership organization. Your Board of Directors shall be comprised of no less than three and no more than nine persons. The Board members shall be of good moral standing in their community and be professed Christians and followers of Jesus Christ. The present Board of Directors consists of [REDACTED], Executive Director, [REDACTED], [REDACTED], [REDACTED], Trustee, and [REDACTED]. You state that the only paid salaries will be that of your Executive Director and any secretarial staff.

Your sources of support will be payments from health insurance companies for your services, direct payments from clients, payments for services under contract with government agencies and health insurance companies like Blue Cross/Blue Shield and grants and donations. You state that you propose to compete for grants from non-profit organizations and solicit funds from churches, community organizations and corporations through letter writing solicitation campaigns.

████████████████████

Your activities will consist of providing the following services:

- a. Individual, family and group psychotherapy.
- b. Drug and alcohol rehabilitation and outpatient treatment and therapy.
- c. Marriage and family counseling.
- d. Spiritual counseling.
- e. Rehabilitation from accidents, disease, and illness counseling.
- f. Play therapy.
- g. Tutoring in home and office.
- h. Children and adolescent therapy.
- i. Educational instruction concerning HIV/Aids, sex, parenting, eating disorders, DWI recovery training, well baby instructions, internships of students in graduate and undergraduate schools, biblical instructions and employment counseling.

Your Executive Director, ██████████, is presently paid an annual salary of \$████████ for directing your daily operations. Her duties will include hiring therapists to see clients; deciding their percentage of compensation for services rendered; supervising the office staff, volunteers and college students; soliciting clients for agency services; meeting with other agencies and staff for referrals and other business related to maintenance of your organization; talking to potential clients and matching them with the therapist who may best meet their need; write proposals to solicit County contracts to provide services for the agency; solicit and provide agency training for therapists; and go to seminars and training workshops to be abreast of new techniques for rendering services and pass information on to counseling staff. The salary will be paid for executive duties only. The use of an agency vehicle will also be included. Any therapy duties will not be included in the salary. The Executive Director's duties will take approximately ██████ hours per week. The other ██████ hours will be occupied with therapist duties. The Board of Trustees determines the Executive Director's compensation based on amount of time, volume of clientele and the number of full and part-time staff and therapists the director has to manage.

[REDACTED]

You state that you presently have [REDACTED] (■) counselors other than [REDACTED] who is both a counselor and your Executive Director. Each of the other [REDACTED] counselors are independent contractors who receive a percentage of the fee charged the client. Such a percentage is usually [REDACTED]% or [REDACTED]% dependent on the counselors length of service with you and the volume of clients. You have no control over the fee they will charge, their work schedule, and the type of client they will see. You state that your Executive Director will not be compensated on a percentage basis for her therapy duties. She will be compensated on a salary basis for her therapy duties. For [REDACTED] she will receive a salary of \$[REDACTED].

You state that your normal and customary fee for individual therapy is \$[REDACTED] per [REDACTED] minute hour; \$[REDACTED] per person for group sessions; \$[REDACTED] for [REDACTED] hours for a family session. You have provided financial information for those cases which you have provided services below your standard rates. However, you did not provide your income from those clients which have paid your usual and customary rates. Therefore, the financial information requested for those periods of time is incomplete.

Your proposal submitted to the [REDACTED] [REDACTED] for diagnostic and treatment services to adults and youth under court supervision states your fees under the contract as \$[REDACTED] per client for individual therapy and \$[REDACTED] per client in group sessions of [REDACTED] minutes. You also state that you accept insurance plans including medical assistance. You have also submitted an agreement between you as a health care provider and [REDACTED] [REDACTED] for the provision of your services to its members. Pursuant to the agreement you will accept payment according to schedules prepared by [REDACTED] [REDACTED].

You state that counselors make visits to churches, schools, and other community groups to talk about the organization's spiritual approach to treatment and how the application works and its outcome. This approach is unique to the secular world and they need to be instructed as to its benefits in treatment. You also state that often referrals are made to you as a result of this activity. [REDACTED] will also solicit clients by talking to other counseling agencies, inpatient facilities, schools, churches; giving talks, workshops, speeches; writing proposals for contracts, and select advertising in Christian publications.

You propose to seek grants for your services by seeking contracts with government agencies in [REDACTED] and [REDACTED] [REDACTED]. You state you will enter into contracts which will call for you to see clients referred to you by the agency. The

You state that [REDACTED] ([REDACTED]), a for-profit corporation, was organized and operated as a sole proprietorship as a part-time endeavor. [REDACTED] was the sole proprietor. She had a separate full time job. [REDACTED] had no employees. It had several independent consultant counselors who were paid a percentage of fee for each client they saw in therapy. You state that the purpose of [REDACTED] was to provide a service [REDACTED] thought was not available to the community. This endeavor did not have a profit motive behind it but rather a motive of providing specific counseling services from a Christian perspective to those in need. [REDACTED]'s operational expenses began exceeding the revenue and [REDACTED] was funding this deficit with personal funds. [REDACTED]'s assets were office furniture, computer, xerox copier, and van with a fair market value of \$[REDACTED]. [REDACTED]'s liabilities is \$[REDACTED] which [REDACTED] loaned [REDACTED] for operating expenses. The loan repayment will be made on a monthly bases with a [REDACTED]% interest rate. [REDACTED]'s assets were transferred by a letter of transfer. Such a letter is not on file. You state that because of [REDACTED]'s commitment to your purposes she gave up her full-time career to pursue [REDACTED] as a full-time endeavor. Consequently, [REDACTED] incorporated your organization and sought tax-exempt status to be able to seek contributions from the general public and various grants to fund your operations.

You state that [REDACTED], like you, provided psychotherapy and counseling services from a Christian perspective and was thus promoting religion as well as positive mental health. You state that although your services and those of [REDACTED] are virtually the same, your structure differs from that of [REDACTED]. You have an independent Board of Directors which reviews and authorizes policies and procedures. You will also have an advisory committee composed of counseling professionals to provide guidance and input from a technical viewpoint. You state that as a tax-exempt organization you will have the ability to seek contributions and grants to fund operations in addition to revenue raised by the various programs. You will also have a trained and licensed professional to provide the counseling services. You state that [REDACTED] is not the sole officer

providing services.

You state you are different from regular commercial counseling services in that you have been founded to provide instructions on living and problem solving based upon the principles of the Holy Bible. This differs from secular counseling in that the Holy Bible is used as the authoritative reference, and God's purpose for the client's life is one of the main focuses of the counseling sessions. Prayer may also be incorporated into the counseling sessions. Each of the counselors is not only a skilled clinician in licensed clinical social work, but each is also a committed Christian. You state your services are available to anyone who wants counseling and may not be able to pay.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for, among others, charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides, in part, that the term "charitable" is used in its generally accepted legal sense.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations defines "private shareholders or individuals" as persons having a personal and private interest in the activities of the organization.

Revenue Ruling 77-366, 1977-2 C.B. 192, provides that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption.

Living Faith, Inc. v. Commissioner of Internal Revenue, T.C. Memo 1990-484, 9/19/90, held that the taxpayer's vegetarian restaurants and health food stores which advocated religious beliefs did not qualify for tax exempt status. The dissemination of literature and information about the Seventh-Day Adventists religious beliefs on diet and health was peripheral and incidental to the substantial commercial purposes of the enterprise.

Living Faith, Inc. was created for charitable purposes within the meaning of section 501(c)(3) of the Code. Its board of directors was comprised of Seventh-Day Adventists Church deacons and ordained elders.

The organization's activities consisted of operating two vegetarian restaurants and health food stores that were open to the public. The meal and food prices were similar to other restaurants and food stores. A requirement for operation was that there be Seventh-Day Adventists management and a good working relationship with the local Seventh-Day Adventists Church. Profits were used to expand its facilities in order to provide other health programs. One Saturday a month the organization provided free meals, and people attending were given the opportunity to sample vegetarian cuisine, to peruse Seventh-Day Adventists literature, and to obtain informal answers to questions about the Seventh-Day Adventists Church. The organization offered a cooking school every few months which was open to the public and promoted the vegetarian lifestyle. The organization often gave free meals to the needy who did work in return. Each work day began with a devotional talk by a staff member, as well as hymn singing and a Bible reading. Bible seminars were conducted in the restaurant each Monday evening after closing. Religious literature was made available to customers. As a result of the organization's evangelistic work,

10 - 12 people joined Seventh-Day Adventists Churches.

Retreat in Motion, Inc. v. Commissioner of Internal Revenue, T.C. Memo 1984-315, 6/21/84, held that a traveling ministry that used a bus to transport and sleep its members is not exempt under section 501(c)(3) of the Code. The bus was not used exclusively for exempt purposes and the trips to Disney World, Washington and the Smokey Mountains served two purposes: religious and recreational. The court further held that the organization's substantial recreational activities were not merely incidental to religious activities.

Retreat in Motion was created for charitable purposes within the meaning of section 501(c)(3) of the Code. Its board of directors was composed of 15 persons, each of whom was a member of one of three United Methodist churches.

The organization's program consisted of taking church-related groups on three- to five-day trips and providing an environment which was more conducive to the sharing of the Christian faith. The bus trips constituted the organization's entire program, with the only other activities ancillary such as fund raising, administration and bus maintenance. Trips were taken to vacation spots around the country where the groups engaged in the typical tourist sightseeing and touring activities. Also, each trip was accompanied by a trained program coordinator who would lead the group in singing, faith exploration, discussion and worship. The premise of the organization's devotional program was that religious conversation and study were encouraged at any time. Additionally, there were formal devotions on a daily basis. The organization estimated that formal devotions were about one hour daily, religious singing two to four hours daily, faith explanations anywhere from 30 minutes to several hours daily, depending upon individual needs, and worship services 35 to 50 minutes on Sunday or the last day of the trip. All of the formal worship activities were attended by all of the trip participants; the informal periods of sharing normally included everyone on the trip.

The court stated, "We are presented here with a factual situation akin to any trip for sightseeing and recreational purposes where the group members are compatible in nature. The fact that the element of compatibility might be religiously oriented and therefore related to exempt activities cannot serve to provide a gloss of exemption over that which is recreational in nature."

Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), held, in part, that the presence of a single non-exempt purpose, if substantial in nature, will

You are similar to the organizations described in the revenue ruling and court cases cited above in that your primary activity is providing counseling services for a fee in a regular commercial manner. The religious perspective used at counseling sessions, when requested by the client, is incidental to the substantial non-exempt purpose.

Based on all the facts and circumstances described above and in the case file, we conclude that your activities are conducted in a manner which primarily benefits "private shareholders and individuals" as defined in section 1.501(a)-1(c) of the regulations. Therefore, you are substantially serving private rather than public interests pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You are not operated exclusively for an exempt purpose as required under section 1.501(c)(3)-1(c)(1) of the regulations.

You are required to file federal income tax returns on Form 1120 for each year that you have been in existence.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

[REDACTED]

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, if you have any questions concerning reporting requirements, please contact your key District Director.

Sincerely,

(signed) [REDACTED]
[REDACTED]

Chief, Exempt Organizations
Rulings Branch 1